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December 27, 2023

BY ECF

The Honorable Gregory H. Woods
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *CITGO Petroleum Corp. v. Ascot Underwriting Ltd., et al.*, Case No. 1:21-cv-00389-GHW

Dear Judge Woods:

We write jointly on behalf of the parties in response to the Court's December 18, 2023 request that the parties file a joint letter addressing (1) the calculation of the 10% "uplift" for International Transits; and (2) prejudgment interest.

1. Calculation of 10% Uplift

The parties are in agreement on the proper calculation of the 10% uplift that the Marine Cargo Reinsurance Policy applies to the Invoice Value of the Cargo and "Carriage and Other Charges as Incurred" for International Transits. The jury awarded \$46,545,593.86 as the Invoice Value of the crude oil, and \$2,296,000.00 for "Carriage and Other Charges as Incurred," for a total of \$48,841,593.86. Ten percent of that value is \$4,884,159.38, which should be added as the applicable uplift under the policy.

2. Calculation of Pre-Judgment Interest

For purposes of awarding prejudgment interest, a federal court sitting in diversity applies the forum state's law. *Maricultura Del Norte, S. de R.L. de C.V. v. Umami Sustainable Seafood, Inc.*, 769 F. App'x 44, 52 (2d Cir. 2019). Under New York law, prejudgment interest is mandatory for claims of breach of contract. *See id.* ("N.Y. C.P.L.R. § 5001(a) speaks in mandatory language: 'Interest shall be recovered upon a sum awarded because of a breach of performance of a contract'" (emphasis the court's)). Interest is computed "from the earliest ascertainable date the cause of action existed, except that interest upon damages incurred thereafter shall be computed from the date incurred." N.Y. C.P.L.R. 5001(b). The statutory rate

Honorable Gregory H. Woods
December 27, 2023
Page 2

is 9%. N.Y. C.P.L.R. 5004. Further, C.P.L.R. 5001(c) provides that “[the amount of interest shall be computed by the clerk of the court, to the date the verdict was rendered or the report or decision was made, and included in the total sum awarded.]”

The statute confers on the Clerk of the Court the duty of performing the actual calculation. As the verdict was rendered on December 18, 2023, it remains only to determine the “earliest ascertainable date the cause of action [for breach of contract] existed.” That date is ascertainable from the pleadings. Defendants acknowledged in their Answer to CITGO’s Second Amended Complaint that Defendants denied CITGO’s claim for coverage in a letter dated March 18, 2020. (Dkt. No. 61, para. 97.) Accordingly, the Clerk of the Court should calculate prejudgment interest at 9% from March 18, 2020, through December 18, 2023.

Respectfully submitted,

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cc: All counsel of record